

I-1-3-25. Processing Cases Under Sections 205(u) and 1631(e)(7) of the Social Security Act (Fraud or Similar Fault “Redeterminations”)

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A. In General

Under sections 205(u) and 1631(e)(7) of the Social Security Act (Act), the Social Security Administration (SSA) must immediately redetermine the entitlement of individuals to monthly disability benefits if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits. A redetermination based on fraud or similar fault is a re-adjudication of the individual's application for benefits. See also Social Security Ruling (SSR) 16-1p: *Titles II And XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) And 1631(e)(7) of the Social Security Act.*

NOTE 1: Redetermination procedures under sections 205(u) and 1631(e)(7) of the Act apply when an individual has received or is receiving monthly benefits. Additionally, under sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act, SSA must disregard evidence when there is reason to believe that fraud or similar fault was involved in providing the evidence in any initial determination.

NOTE 2: Redeterminations are initiated by statutory mandate, not at the discretion of an individual SSA employee or adjudicator. For instructions on adjudicating cases involving fraud or similar fault that are not redeterminations under sections 205(u) and 1631(e)(7) of the Act, see Hearings, Appeals, and Litigation Law (HALLEX) manual I-1-3-15.

When redetermining entitlement to benefits, SSA must disregard any evidence if there is reason to believe fraud or similar fault was involved in providing the evidence. However, a finding that fraud or similar fault was involved in an individual's application or in providing evidence to SSA does not constitute complete adjudicative action on a claim. SSA will consider the evidence previously submitted for the period being redetermined and, even if certain evidence is disregarded because there was a reason to believe fraud or similar fault was involved in providing that evidence, a person may still be found entitled to, or eligible for, monthly benefits. Additionally, SSA can consider any new and material evidence that does not involve fraud or similar fault and that is related to the period being redetermined. (For definitions of new, material, and related to the period at issue, see HALLEX I-2-9-40 C and I-3-3-6).

SSA may be required to redetermine entitlement to benefits under sections 205(u) and 1631(e)(7) of the Act when it receives

information from the Office of the Inspector General (OIG) pursuant to section 1129(l) of the Act. As soon as OIG has reason to believe that fraud or similar fault was involved in the application of an individual for monthly insurance benefits under title II or for benefits under title VIII or XVI, section 1129(l) of the Act requires the OIG to make available information identifying the individual to SSA. The OIG will provide this information to the agency unless a prosecutor with jurisdiction over a potential or actual related criminal case(s) certifies in writing that providing the information or redetermining the eligibility of a beneficiary or recipient would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information was derived.

SSA may receive information from a federal or state prosecutor that provides a reason to believe that fraud or similar fault was involved in the application for benefits or that fraud or similar fault was involved in providing certain evidence in an individual's application. As with OIG referrals, SSA will not act on this information when the prosecutor certifies in writing that SSA's use of the information will jeopardize criminal proceedings.

Finally, SSA may also uncover information in the course of processing or reviewing a case(s) that provides a reason to believe that fraud or similar fault was involved in the application for benefits. In this situation, SSA may make its own fraud or similar fault findings and conduct a redetermination on that basis.

B. Procedures

1. Identification of Cases

SSA will redetermine cases when there is reason to believe that fraud or similar fault was involved in an individual's application for monthly disability benefits. Unless the redeterminations apply only at the hearing or Appeals Council levels, redeterminations may be coordinated with other components.

2. Instructions for Processing Cases

Except in unusual circumstances where individual case instruction is more appropriate, OARO and OHO will draft specific processing instructions for any group of cases involving the same source(s) believed to have committed fraud or similar fault. To meet the "immediacy" requirement, OARO and OHO may initially release instructions in a temporary format such as a memorandum or other established mechanism, but will usually finalize instructions in a HALLEX temporary instruction (TI). In cases where there is an ongoing criminal investigation, the case-specific HALLEX TI may not be made publicly available. However, relevant information will be provided in notices and other SSA communications with the beneficiary or recipient.

C. Special Adjudication Issues in Redeterminations

For each group of cases, the HALLEX TI will address the factual and legal basis for conducting the redetermination. The instructions will also address specific business processing needs, such as identification of the cases in the applicable processing systems, how to establish a case, which office will process the action, routing issues, and so forth. Additionally, the instructions will usually provide case-specific details for the following general issues:

1. Screening Identified Cases

The HALLEX TI will specifically describe the evidence SSA must disregard.

OARO or OHO will then screen the identified cases to determine whether, after disregarding the identified evidence, the original favorable decision is supported by a preponderance of the remaining evidence. If the prior decision remains supported, OARO or OHO will document the record and end further redetermination proceedings. If the prior decision is not supported, OARO or OHO will proceed with further redetermination proceedings (as explained in following procedures).

2. Notice to Beneficiary or Recipient

When the prior decision is not supported, OHO or OARO will send the beneficiary or recipient an appropriate notice. The notice will include information regarding the factual and legal basis for the redetermination. Additionally, the notice will explain in clear terms the redetermination process, including where, when, and how the individual may submit new and material evidence that is related to the period at issue, and how SSA will consider requests for an extension of time. If OIG has identified the individual pursuant to section 1129(l) of the Act, SSA will provide a summary of the OIG investigative findings, as well as a copy of the OIG 1129(l) referral, with the notice or in the claim(s) file. If a prosecuting authority identified the individual, SSA will provide a summary of the prosecutor's finding(s), as well as a copy of the indictment(s), plea agreement(s), or other court filing(s) relevant to the case.

If SSA determined that fraud or similar fault was involved in the individual's application, SSA will provide detailed information regarding relevant criminal, civil, congressional, or administrative investigative findings and how they relate to the individual's application for benefits. SSA will associate copies of any relevant material(s) with the notice and in the claim(s) file.

NOTE: When a title II claim is being redetermined, SSA has the authority to suspend current benefits after giving proper notice to the beneficiary. When appropriate, the adverse redetermination notice will clearly explain how SSA intends to handle payment of benefits during the pendency of the redetermination proceedings.

In most cases that are processed at the hearing level, OHO will also provide additional notice of the issue(s) by including special language in the acknowledgement of the hearing request and, if applicable, the notice of hearing.

3. Period of Adjudication

When redetermining a claim(s), an adjudicator will be directed to consider the claim(s) only through the date of the final and binding determination or decision on the beneficiary's or recipient's application for benefits (i.e., the original allowance date).

NOTE: An adjudicator will give special attention to specific processing instructions for handling allegations of a disabling impairment(s) with onset after the date of the adjudication. See HALLEX I-1-3-25 C.4.c. below.

4. Evidence

a. Disregarding Evidence

Pursuant to sections 205(u) and 1631(e)(7) of the Act, SSA will set forth detailed case specific instructions regarding the evidence SSA must disregard. SSA must disregard evidence based on any of the following:

- OIG referrals of information pursuant to section 1129(l) of the Act;
- A referral based on information obtained during a criminal or other law enforcement investigation; or
- An SSA investigation that results in a finding of fraud or similar fault.

Under sections 205(u) and 1631(e)(7) of the Act, adjudicators do not have discretion to reconsider the issue of whether the identified evidence should be disregarded when based on an OIG referral of information or a referral based on information obtained during a criminal or other law enforcement investigation.

However, when the redetermination is based solely on an SSA finding of fraud or similar fault, an adjudicator can consider a beneficiary's or recipient's objection to the disregarding of certain evidence. If the adjudicator is satisfied that fraud or similar fault was not involved in providing the evidence, he or she will consider the evidence. However, if the adjudicator disregards the evidence because a preponderance of the evidence shows that fraud or similar fault was involved in providing the evidence, he or she will address the beneficiary's or recipient's objection in his or her decision.

Evidence that is disregarded will remain associated in the claim(s) file but will be clearly designated as disregarded evidence.

When considering other evidence in the claim(s) file, adjudicators will use the procedures in SSR 16-2p: *Titles II and XVI: Evaluation of Claims Involving Similar Fault in the Providing of Evidence* and applicable HALLEX provisions in I-2-10 and I-3-10 to determine whether to disregard other evidence.

b. Developing Evidence

During redeterminations based on fraud or similar fault, SSA will not generally develop evidence. However, development may be appropriate in circumstances such as the following:

- Medical or vocational expert evidence is needed;

- Evidence that is new, material, and related to the period at issue was received but is missing pages or is otherwise incomplete;
- A beneficiary requests assistance in developing records that he or she indicates are new, material, and related to the period at issue, and the record does not show that SSA previously made every reasonable effort to develop the same evidence; or
- The adjudicator finds it necessary to develop new sources of evidence for the period at issue (specifically limiting the request for information to the time period being adjudicated).

c. Additional Evidence Submitted

When a beneficiary or recipient submits additional evidence after receiving notice of the redetermination proceedings, and that evidence is not required to be disregarded, the adjudicator will consider the submitted evidence if it is new, material, and related to the time period at issue, as defined in HALLEX I-2-9-40 C and I-3-3-6. Evidence that post-dates the original determination or decision can relate to the period at issue if it is reasonably related to the time period originally adjudicated. For example, a medical source may submit a statement that post-dates but specifically addresses the time period at issue. OHO or OARO will associate and exhibit evidence that is new, material, and related to the time period at issue. Additionally, OHO or OARO will associate with the claim(s) file and exhibit any statements or arguments from the beneficiary or recipient.

NOTE 1: If the information is not new, material, and related to the time period at issue, the adjudicator will associate the information with the claim(s) file but will not exhibit the information.

If the beneficiary or recipient submits evidence of an impairment that existed at the time of the original allowance date, but was not alleged on his or her application, SSA will generally consider that evidence. However, if the particular circumstances involved require that a certain type of evidence be disregarded, SSA may also disregard any newly submitted evidence involving that type of evidence.

If the beneficiary or recipient submits evidence of a new impairment unrelated to those alleged in the application being redetermined, and the onset date is after the original allowance date, the adjudicator will usually not consider or develop the evidence of the new impairment during the redetermination. However, the beneficiary or recipient is not precluded from filing a new application under SSR 11-1p: *Titles II and XVI: Procedures for Handling Requests to File Subsequent Applications for Disability Benefits*. If additional evidence shows a new critical or disabling condition is present but began after the period at issue, or the beneficiary or recipient inquires about filing a new application, OHO or OARO staff will inform the beneficiary that he or she may file a new application. See HALLEX I-1-

10-1 C for the definition of "critical or disabling condition" for filing a new application purposes. If OHO or OARO staff informs the beneficiary or recipient of the opportunity to file a new application verbally, staff will document the conversation on a form SSA-5002, Report of Contact, and provide a copy to the beneficiary or recipient.

NOTE 2: If a new application is filed and a redetermination case is pending at the hearing level, an administrative law judge will not accept an escalated claim or consolidate the redetermination claim with the new application (see Program Operations Manual System (POMS) DI 12045.010A). The claim(s) cannot be consolidated because there is no "common issue" as defined in POMS (i.e., there are different issues and time periods involved in the redetermination claim and the subsequent application).

5. When a Hearing Is Needed

The Social Security Administration (SSA) will generally offer a hearing when:

- The favorable decision was issued without a hearing;
- The favorable decision was issued after a minimal hearing where the beneficiary or recipient offered little or no testimony; or
- A hearing is necessary to obtain medical or vocational expert evidence prior to issuing a redetermined decision.

Even when the circumstances above are present, a hearing is not required if the remaining evidence of record supports a favorable decision after disregarding evidence under sections 205(u) and 1631(e)(7) of the Act.

Additionally, when a recipient is receiving payments under title XVI, SSA will offer the opportunity for a hearing prior to taking an action that would result in a termination of benefits, pursuant to *Goldberg v. Kelly*, 397 U.S. 254 (1970).

6. Appeal Rights and Special Decision Language

When SSA initiates redetermination proceedings on an OHO or OARO level case and the case is not "screened out" under the procedures in HALLEX I-1-3-25 C.1. above, an adjudicator must issue a decision on the case. Under no circumstances can an adjudicator dismiss a request for hearing or a request for review, even if the usual criteria for a dismissal are present.

NOTE: This prohibition does not apply, however, to an appeal of a determination or decision redetermined under sections 205(u) and 1631(e)(7) of the Act at another administrative level. For appeal procedures, see HALLEX I-1-3-25 C.8. below.

In the decision, an adjudicator will clearly explain that a beneficiary or recipient may appeal the decision regarding whether he or she was entitled to disability benefits or supplemental security income as of the original allowance date.

Additionally, the adjudicator will clearly explain in the decision one of the following, as applicable:

- If SSA's action was based on OIG referrals of information pursuant to section 1129(l) of the Act or referrals based on information obtained during a criminal or other law enforcement investigation, the beneficiary or recipient may not appeal the agency's statutory mandate to conduct the redetermination or to disregard evidence; or
- If SSA conducted the redetermination based on its own finding of fraud or similar fault, the beneficiary or recipient may not challenge the statutory mandate to conduct the redetermination, but may appeal whether SSA should have disregarded evidence.

If SSA conducted or initiated a continuing disability review (CDR) before notice of the redetermination proceedings, the adjudicator will explain in the decision that the redetermination proceedings supersede any findings made during the CDR.

The applicable HALLEX TI will address any additional special language that is required in the decision due to the unique circumstances involved.

7. Representative Fee Issues

Newly appointed representative fee issues will be handled on a case-by-case basis. However, in situations where SSA does not suspend benefits, there will be no past due benefits if a favorable decision is issued because the beneficiary or recipient is receiving ongoing benefits. When there are no past due benefits, OHO or OARO must disapprove any fee agreement. See HALLEX I-1-2-12.

Any appointed or previously appointed representative can submit a fee petition for the services he or she provided, and OHO or OARO will use the applicable procedures in HALLEX I-1-2 for evaluating these requests and determining a reasonable fee. However, if a representative submits a contingency fee contract, the representative is not entitled to request a fee unless a favorable decision is issued on the redetermination proceedings. See HALLEX I-1-2-51.

8. Appeals of Redeterminations Performed at Another Administrative Level

Unique appeal processing issues will be set forth in a HALLEX TI, based on the particular circumstances involved. Regardless of the unique processing instructions, when dismissal criteria is present on an appeal after a redetermination, and a dismissal would otherwise be appropriate, an adjudicator may dismiss the appeal request. For the criteria for dismissing a request for hearing, see HALLEX I-2-4-5. For the criteria for dismissing a request for review, see HALLEX I-3-4-1.